

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 12, 2007

IN RE J.W.L AND J.R.G.

**Appeal from the Chancery Court for Lawrence County
No. 12869-06**

No. M2007-00167-COA-R3-PT - Filed September 25, 2007

Mother appeals the termination of her parental rights to her two children, J.W.L. and J.R.G. The trial court terminated Mother's parental rights on the grounds of mental incompetence and failure to remedy persistent conditions. The court also found that the termination of Mother's parental rights was in the children's best interest. We affirm the trial court's termination of parental rights based upon Mother's failure to remedy persistent conditions.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., joined. WILLIAM B. CAIN, P.J., M.S., not participating.

M. Wallace Coleman, Jr., Lawrenceburg, Tennessee, for the appellant, N.G.G.

Robert E. Cooper, Jr., Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

MEMORANDUM OPINION¹

J.W.L. and J.R.G. (the children) first entered the custody of the Department of Children's Services in April 2000 at the ages of eleven and one, respectively, when Mother entered a best interest plea in criminal court to charges of child neglect. Approximately two years later, the maternal grandparents were given custody of the children, but the Department removed the children from the grandparents less than a year later due to dependency and neglect. In March 2003, the children were placed with foster parents where they remain.

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

During the first five years after the children were removed by the Department, Mother made no effort towards regaining custody of the children. Moreover, Mother admits that she was unable to take the children when they were removed from the grandparents because she did not have a home or any income. However, she has had supervised visitation with the children every other week for two hours during the duration of their Department custody.

Mother has a significant history of mental health issues. She has been admitted for in-patient psychiatric care on multiple occasions and has received care and treatment through Centerstone Community Mental Health Centers for several years. She has been diagnosed with bipolar disorder.

In the fall of 2005, Mother petitioned to regain custody of the children. The Department and Mother submitted an agreed order that moved Mother's visitation to her home, increased the visitation from two to four hours, and also contemplated making the visits unsupervised in the future. However, this new visitation plan had a detrimental effect on the older child, who suffers from severe autism and requires constant adult supervision. Therefore, the juvenile court terminated the in-home visits because they were not in the best interests of the children.

Around this time, the Department agreed to give Mother additional resources through Youth Villages to help her learn how to properly care for the children and handle the needs of her severely autistic child. Youth Villages began an in-home program for Mother in December of 2005 with the purpose of educating Mother on the services her autistic child would need when he transitioned home.

However, the Youth Villages supervisor quickly realized that the program was not going to help because Mother believed that her child would no longer be autistic or mentally handicapped when he came home. Mother also refused to meet with the counselor three times per week because her schedule was too full. Because the Youth Villages supervisor ran into these significant barriers, Mother was discharged from the Youth Villages service "unsuccessfully with poor outcome" on June 6, 2006.

Three months after the Youth Villages counseling commenced, the Department filed a petition for termination of Mother's parental rights in the Lawrence County Chancery Court. The Department alleged persistence of conditions that would cause the children to be subject to further neglect, mental incompetence, and the best interests of the children. A trial was held on December 9, 2006.²

Testimony at trial established that Mother, age 43, had been living with her boyfriend, age 20, for the past nine months. The boyfriend testified that he draws a social security disability check and is bipolar, but was not currently taking any medication. The Department caseworker for the past year testified that he had witnessed Mother's poor personal hygiene on half of the eighteen to twenty

² The father's parental rights were terminated by a separate proceeding and are not an issue in this appeal.

visits he supervised with Mother and the children. The caseworker also testified as to Mother's uncooperativeness in arranging an inspection of her home prior to trial.

Following a full evidentiary hearing in which Mother was ably represented by counsel, the trial court granted the petition for the termination of Mother's parental rights in December of 2006, finding clear and convincing evidence established two statutory grounds upon which to terminate Mother's parental rights, and that termination was in the children's best interests. Mother appeals, contending the decision terminating her parental rights was against the weight of the evidence.³

ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

The party seeking to terminate parental rights must prove two elements. That party, the petitioner, has the burden of proving that there exists a statutory ground for termination. Tenn. Code Ann. § 36-1-113(c)(1) (2005); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). Furthermore, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2) (2005); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). See *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child).

The elements stated above must be established by clear and convincing evidence. See Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The clear and convincing evidence standard is a heightened burden of proof which serves to minimize the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *Matter of M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying this high standard produces a firm belief or conviction regarding the truth of facts sought to be established. *In re C.W.W.*, 37 S.W.3d at 474. The clear and convincing evidence standard defies precise definition. *Majors v. Smith*, 776 S.W.2d 538, 540 (Tenn. Ct. App. 1989). It is more exacting than the preponderance of the evidence standard, *Santosky v. Kramer*, 455 U.S. 745, 766 (1982); *Rentenbach Eng'g Co. v. General Realty Ltd.*, 707 S.W.2d 524, 527 (Tenn. Ct. App. 1985), yet it does not require such certainty as the beyond a reasonable doubt standard. *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn. Ct. App. 1992); *State v. Groves*, 735 S.W.2d 843, 846 (Tenn. Crim. App. 1987). Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence, see *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn. 1992), and it should produce a firm

³ Mother does not challenge the sufficiency of the Department's efforts to assist her or to reunify her with the child.

belief or conviction with regard to the truth of the allegations sought to be established. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. Ct. App. 1993); *Brandon*, 838 S.W.2d at 536; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. Ct. App. 1985).

Although the trial judge found two grounds upon which to terminate Mother's parental rights, the Department only needs to sustain the finding of one of the grounds. *See* Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838; *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). The record before us fully supports the trial court's findings that Mother failed to adjust the persistent circumstances and conditions that made it unsafe for the children to be in her home and in her custody, including her failure to utilize resources repeatedly offered to her and that would have given her the knowledge and skills needed to care for her children. We therefore conclude that the Department presented sufficient evidence to establish a statutory ground for termination of Mother's parental rights.⁴

In addition to proving at least one statutory ground upon which to terminate Mother's parental rights, the Department must also prove that termination of parental rights is in the children's best interest. Tenn. Code Ann. § 36-1-113(c)(2) (2005); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003). The trial court found the evidence more than sufficient to establish that termination of her parental rights was in the children's best interest. The record before us fully supports the finding that termination is in the children's best interest.

We therefore affirm the termination of Mother's parental rights due to her failure to remedy persistent conditions and on the basis that termination of her rights is in the children's best interests. This matter is remanded with costs of appeal assessed against the Department of Children's Services, due to Mother's indigency.

FRANK G. CLEMENT, JR., JUDGE

⁴The trial court also held that Mother's rights should be terminated on the grounds of mental incompetence. Although there is much evidence in the record that indicates she has several mental health issues, the record does not contain expert evidence sufficient to sustain a finding of mental incompetence based on the clear and convincing evidentiary standard. We therefore conclude that the record does not support this finding.